

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of the Petition of)
The United States Telecom Association)
For a Rulemaking to Amend Pole Attachment) RM No. 11293
Rate Regulation and Complaint Procedures)
)

Comments of Alltel

Alltel Corporation (“Alltel”), on behalf of its incumbent local exchange carrier (“ILEC”) affiliates, hereby submits its comments in response to the Public Notice¹ through which the Commission sought comment on the Petition for Rulemaking filed by USTelecom.² In its Petition, USTelecom seeks to amend the Commission’s rules governing pole attachment rates, terms and conditions in order to protect ILECs from unreasonable pole rental rate discrimination.

I. USTelecom’s Petition for Rulemaking is wholly correct as a matter of policy and law.

Alltel supports fully USTelecom's Petition which espouses a logical and fair policy of equal pole rate protection for all providers of telecommunications service and is based on unambiguous provisions of law. Alltel files these comments merely to reinforce for the Commission the fact that the issues set forth in the USTelecom

¹ *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Report No. 2737 (rel. November 2, 2005).

² *In the Matter of The United States Telecom Association For a Rulemaking to Amend Pole Attachment Rule Regulation and Complaint Procedures* (filed October 11, 2005) (“USTelecom Petition”).

Petition are indeed an industry epidemic. Specifically, USTelecom is correct that the Commission's rules are problematic to the extent that they leave room for the electric utilities to charge discriminatory rates to ILECs. On its face, however, the Telecommunications Act of 1996 ("the Act") requires that the Commission ensure that *all* pole rates be reasonable.

Additionally, Alltel agrees with USTelecom that the right of ILECs to access poles is not appropriately addressed in this Commission rulemaking. Nevertheless, the Commission should be aware that the relief sought in the USTelecom Petition only partially remedies the many problems encountered by ILECs with respect to pole attachments. In part, ILECs should be granted equal access to poles, and electric cooperatives must be stopped from demanding exorbitant pole rental rates from all providers of telecommunications services – including ILECs.³ While existing language in the Act may prevent the Commission from addressing all of these issues in this rulemaking, Alltel agrees that the relief requested by USTelecom in its Petition (*i.e.*, equal pole rate protection and application of the Commission's complaint procedures) is critical to help correct the existing distortion in the competitive telecommunications marketplace caused by the disparate rates electric utilities demand of various providers of telecommunications service.

II. The Commission's rules do not result in just and reasonable pole attachment rates for all providers of telecommunications service, as mandated by the Act.

³ Pursuant to 47 U.S.C. 224, the term "utility" encompasses electric utilities but does not include electric cooperatives.

USTelecom correctly asserts that the Commission's rules and complaint procedures fall short of enforcing Section 224(b)(1), which mandates that the Commission "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable...." Despite this seemingly straight-forward language in the Act, the Commission's rules in their present form have been interpreted to allow for a "loophole" through which electric utilities demand unreasonable pole rental rates to at least one segment of telecommunications service providers, the ILECs. As set forth in the USTelecom Petition, the electric utilities' actions in demanding that ILECs pay pole rates higher than their competitive counterparts are wholly unjustified and unsupported by any public policy or provision of law. Competitive LECs ("CLECs"), cable television providers (including even those offering telephony over "CATV" attachments), and wireless service providers clearly are protected under the Commission's rules and precedent from unreasonable pole attachment rates by the electric utilities. Electric utilities discriminate against ILECs even though CLECs, CATV providers, and wireless providers make virtually identical use of electric utility poles. All, however, are granted protection from unreasonable pole attachment rates under the Act.

Indeed, Alltel's ILEC affiliates are experiencing first hand the effects of such discrimination. For example, in one of its states, Alltel's ILEC subsidiary has faced demands by a large electric utility for a \$54 per pole rental rate. In comparison, Alltel's CLEC affiliate in the same state pays this same electric utility an average

\$6 per pole rate. Thus, for the same pole access, Alltel's ILEC is asked to pay rates nine times higher than its CLEC counterpart – for the identical means of attachment to the same types of poles. In general, rates charged to ILECs by the electric utilities for pole attachments are approximately 200% higher than those prescribed by the Commission's formula for other providers of telecommunications service or proposed by such utilities in ongoing negotiations.⁴

Presently, Alltel incurs approximately \$8.0 million in annual expense for pole attachments with electric utilities. If the electric utilities are allowed to charge the rates they are demanding, Alltel's annual pole attachment expense would increase by 231%. Alltel's total potential pole attachment expense increase is even more alarming when the electric cooperatives and municipalities are included. If electric cooperatives and municipalities are allowed to charge the rates they seek, Alltel's annual pole attachment expense would increase from \$13.0 million to more than \$30.0 million.

As noted in the USTelecom Petition, such unjust and unreasonable rates by electric utilities are not contemplated under the Act and should not be tolerated under the Commission's rules. The Commission should amend its rules to clearly provide that all providers of telecommunications service are protected from such discriminatory pole attachment rates, terms and conditions.

⁴ See, 47 C.F.R. §1.1409(e)(2). Alltel used publicly available information to calculate pole attachment rates for electric utilities required to report FERC reports. For utilities not required to file FERC reports, Alltel compared the rates it is currently paying to the rates proposed by pole owners in ongoing negotiations.

III. The USTelecom Petition should be granted.

The abuses addressed by USTelecom with respect to unjust and unreasonable discriminatory pole rental rates are occurring throughout the industry on a frequent basis. The Commission has and should exercise jurisdiction to remedy this situation with respect to investor-owned electric utilities. As USTelecom duly notes, the Act clearly intended that pole attachment rates charged to all providers of telecommunications service should be just and reasonable. The Commission is charged with the responsibility of ensuring that all such rates do in fact meet these criteria. Accordingly, the Commission should amend its rules to clarify beyond all doubt that electric utilities are prohibited from demanding unjust and unreasonable pole rates from any provider of telecommunications service, most specifically ILECs. As the Commission has already established formulas with respect to calculating just and reasonable rates for other types of providers of telecommunications services, it is only fitting that the Commission apply these same formulas to ILECs as well as proposed in the USTelecom Petition.

IV. Conclusion.

Alltel fully supports the USTelecom Petition and urges the Commission to grant the relief requested therein on an expeditious basis. Electric utilities are actively discriminating against ILECs and demanding that ILECs pay unjust and unreasonable pole rental rates. Contrary to the Act, the Commission's rules and precedent do not adequately clarify that all pole rates charged to all providers of telecommunications service (including ILECs) must be just and reasonable. Yet, the

Commission is charged under the Act with the responsibility of ensuring the reasonableness of all such pole rates. The Commission must act to carry out its obligations under the Act and to stop these abuses by electric utilities. The Commission already has established formulas yielding just and reasonable pole rates for other providers of telecommunications service and should make it clear that these same formulas apply to ILECs as well.

Alltel urges the Commission to grant the USTelecom Petition in its entirety and greatly appreciates the opportunity to comment on these matters.

Respectfully submitted,

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